



PHILIPPINES: IMPUNITY ON THE RISE UNDER THE NEW GOVERNMENT

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW – 27TH SESSION OF THE UPR WORKING GROUP, MAY 2017

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of the Philippines taking place in May 2017. In it, Amnesty International evaluates the implementation of recommendations made to the Philippines in its previous UPR, assesses the national human rights framework and the situation of human rights on the ground, and makes a number of recommendations to the Philippines authorities to strengthen human rights protection and address human rights challenges at the national level.

Amnesty International is alarmed at the high rate of killings that followed the election of President Rodrigo Duterte in May 2016, many of which may amount to extrajudicial executions. The organization is also concerned about allegations of enforced disappearances, torture and other ill-treatment by police officers during arrest and detention, and the pattern of impunity which persists in relation to these abuses.

Women and girls' sexual and reproductive rights are undermined by the total abortion ban.

FOLLOW-UP TO THE PREVIOUS REVIEW

EXTRAJUDICIAL KILLINGS

During its second UPR in 2012, the Philippines accepted recommendations to eliminate extrajudicial executions.¹ To date, however, Amnesty International continues to receive reports of unlawful killings by both state and non-state actors.

Since President Rodrigo Duterte entered into office on 30 June 2016, a wave of killings has claimed over 3,000 lives as the result of the government's "war on drugs". The majority of the victims were suspected drug sellers and users.² More than 1,000 of these killings, many of which may amount to extrajudicial executions, have been committed by the police, with the remainder carried out by unknown vigilantes.³

ENFORCED DISAPPEARANCES

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Philippines, A/HRC/21/12, 9 July 2012, recommendations 129.14 (Germany), 129.15 (Spain, United States of America).

² Amnesty International, *Philippines: Further Information: Killings continue under President Duterte* (Index: ASA 35/4857/2016).

³ Amnesty International, *Philippines: Over 1700 killings by unknown assassins and police indicate lawlessness, not crime control* (Index: ASA 35/4706/2016).

The Philippines also accepted recommendations to end impunity for enforced disappearances, including by ensuring that alleged perpetrators are swiftly brought to justice.⁴ In 2012, the Philippines enacted the Anti-Enforced or Involuntary Disappearances Act; however, there have been no convictions under the Act.⁵

TORTURE AND OTHER ILL-TREATMENT

During the previous UPR, the Philippines accepted recommendations to prevent, prohibit and eliminate torture and other ill-treatment.⁶ Amnesty International notes efforts by the government since the last review, including the enactment of the 2013 Human Rights Victims Reparation and Recognition Act. However, the Philippines has yet to establish a national preventive mechanism, as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in line with the commitment it made during the last review.⁷

The government also accepted recommendations to prosecute those responsible for acts of torture and other ill-treatment, with a special focus on the responsibility of superior officers.⁸ Yet, seven years after its promulgation, the implementation of the Anti-Torture Act 2009 remains weak, with only one conviction in April 2016.⁹

In November 2012, the Office of the Philippine President issued Administrative Order No. 35 (AO 35), creating special teams of prosecutors tasked with helping law enforcement agencies conduct fact-finding investigations into cases of torture, enforced disappearances and extrajudicial executions.¹⁰ However, almost four years after its introduction little is known about AO 35 and the implementation of its guidelines.¹¹

WOMEN'S RIGHTS

In the 2012 UPR, the Philippines accepted recommendations to protect the right to health, including sexual and reproductive health.¹² Since then, the Philippines has taken a number of positive steps, including adopting the Responsible Parenthood and Reproductive Health Act in 2012, and the Domestic Workers Act and the Expanded Anti-Trafficking in Persons Act in 2013. However, although the Responsible Parenthood and Reproductive Health Act provides women with access to modern contraception, reproductive health information and services,¹³ it has

⁴ A/HRC/21/12, recommendations 129.15 (Spain, United States of America), 129.16 (Sweden, Timor Leste).

⁵ A/HRC/21/12, recommendations 129.17 (Republic of Korea, Egypt), 129.18 (Austria).

⁶ A/HRC/21/12, recommendations 129.12 (Holy See), 129.13 (Trinidad and Tobago), 129.15 (Spain, USA), 129.18 (Austria), 129.19 (Turkey), 129.20 (Ireland, Mexico, Denmark), 129.28 (Indonesia).

⁷ A/HRC/21/12, recommendations 129.21 (France, New Zealand, Denmark).

⁸ A/HRC/21/12, recommendations 129.12 (Holy See), 129.15 (USA), 129.18 (Austria), 129.20 (Mexico, Denmark).

⁹ Amnesty International, *Historic ruling on police torture following Amnesty International campaign*, 1 April 2016; Amnesty International, *Philippines: Impunity despite Philippines' Landmark Anti-Torture Act*, 4 December 2014.

¹⁰ Official Gazette of the Republic of the Philippines, Administrative Order No. 35, s. 2012.

¹¹ A/HRC/21/12, recommendation 129.18 (Austria), 131.18 (Denmark).

¹² A/HRC/21/12, recommendations 129.7 (Spain), 129.40 (Switzerland, Sweden), 129.41 (Slovakia, New Zealand).

¹³ Amnesty International, *Supreme Court ruling bolsters landmark law on reproductive rights*, 8 April 2014.

suffered from inconsistent implementation across the Philippines, and budgetary cuts to measures to improve the enjoyment of sexual and reproductive rights. Furthermore, there is no mechanism to monitor the implementation of the Act.¹⁴

THE NATIONAL HUMAN RIGHTS FRAMEWORK

The Philippines has ratified eight human rights treaties. It has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. In 2012, the Philippines enacted the Anti-Enforced or Involuntary Disappearances Act, however, Amnesty International has found that some of its provisions fall short of the requirements of international law and standards. In particular, the Act contains no provisions criminalizing enforced disappearance committed by groups acting without the authorization, acquiescence or support of the state, and the provision in Section 14 regarding “command responsibility” appears to be limited to the “immediate commanding officer” in the military or the “immediate senior official” in the police.¹⁵

Victims of human rights violations continue to face barriers in accessing justice, including fear of reprisals and intimidation and threats. Although the Witness Protection, Security and Benefit Act provides for extensive protection, its implementation is weak. It does not meet the urgent requirement of many witnesses, including families faced with a process that involves several bureaucratic layers.¹⁶

The Commission on Human Rights is mandated to monitor and investigate all reports of human rights violations and abuses in the Philippine. It may also refer its reports to the Prosecutor’s Office for further criminal proceeding.¹⁷ However, the Commission faces difficulties in fulfilling its mandate due to capacity and operational challenges, including insufficient budget.¹⁸

¹⁴ United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the Philippines*, CEDAW/C/PHL/CO/7-8, recommendation 39(c).

¹⁵ Philippines: *Building on the anti-enforced disappearance act and signing the International Convention for the Protection of all Persons from Enforced Disappearance* (Index: ASA 35/010/2012).

¹⁶ Amnesty International, *Above the Law: Police torture in the Philippines* (Index: ASA 35/007/2014) p.74.

¹⁷ The Constitution of the Republic of the Philippines (1987); Executive Order 163.

¹⁸ A/HRC/21/12, recommendation 131.13 (Iraq); Commission on Human Rights of the Philippines, Agency Profile 2015-2016.

THE HUMAN RIGHTS SITUATION ON THE GROUND

UNLAWFUL KILLINGS AND ENFORCED DISAPPEARANCES

Unlawful killings and enforced disappearances continue to be reported, with suspected drug traffickers and users, local journalists, lawyers, judges, activists and perceived communist sympathizers or Muslim insurgent groups at particular risk. Since the previous review, few perpetrators of such human rights violations are known to have been brought to justice.¹⁹

Since 30 June 2016, there has been a rapid rise in killings, many of which may amount to extrajudicial executions.²⁰ The rise in killings follows the election in May 2016 of President Rodrigo Duterte who has repeatedly and publicly endorsed the arrest and killing of those suspected of using or selling drugs. An unlawful and deliberate killing carried out by order of a state actor, or with the state's complicity or acquiescence, is an extrajudicial execution – a crime under international law.²¹ As of September 2016, over 3,000 killings have been carried out by police or unknown hitmen across the country.²²

In April 2016, police used excessive force, including firearms, to disperse a group of over 5,000 farmers, who had blockaded a national highway in Kidapawan City during a demonstration demanding rice subsidies. At least two persons died during the incident and dozens were injured.

Abuses by armed groups and state militia continue. In 2015, three leaders of Lumad, a group of Indigenous Peoples in southern Philippines, were killed. Local human rights groups have accused an armed militia allegedly trained by the military of being responsible for the attack.²³

¹⁹ Amnesty International Report 2013, *The state of the world's human rights* (Index: POL 10/001/2013); Amnesty International Report 2014/2015, *The state of the world's human rights* (Index: POL 10/001/2015); Amnesty International Report 2015/16, *The state of the world's human rights* (Index: POL 10/2552/2016).

²⁰ Amnesty International, *Philippines: Over 1700 killings by unknown assassins and police indicate lawlessness, not crime control* (Index: ASA 35/4706/2016).

²¹ Paragraph 18 of the 1989 Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states that: "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed."

²² On 20 September 2016 before a senate inquiry into drug related killings, Philippine Police Chief Ronald dela Rosa stated that over 1,500 people had been killed in police operations, with over 2,000 murders by unknown assailants under investigation since 1 July 2016. This number was since revised down slightly afterwards, to over 3000 killings.

²³ Amnesty International Report 2015/2016, *The state of the worlds human rights* (Index: POL 10/2552/2016), p. 294.

Hearings continue in the case of the 2009 Maguindanao massacre in which 58 people, including 32 media workers, were killed by state armed militias allegedly led by government officials. At least eight witnesses and their family members have been killed since November 2009; however, seven years later, only a few of the suspected perpetrators are known to have been held accountable. Other witnesses and their relatives remain at risk of being killed or intimidated.²⁴

TORTURE AND OTHER ILL-TREATMENT

In its Concluding Observations on the Philippines in 2016, the Committee against Torture noted that it was “concerned that impunity for acts of torture continues to prevail”.²⁵

Amnesty International continues to receive compelling evidence of torture and other ill-treatment in the Philippines, with the majority of reports suggesting that police officers are the alleged perpetrators. Torture and other ill-treatment of common criminal suspects by the police remain under-reported and almost undocumented, despite their alarming frequency.²⁶

From 2010 to 2014, Amnesty International documented 55 cases of torture and other ill-treatment by police during arrest and detention. Research found that police subjected detainees to systematic beating, punching and kicking, electric shocks, burning with cigarettes, waterboarding and various forms of sexual torture.²⁷

Among those most at risk of torture and other ill-treatment are criminal suspects, including juvenile suspects, informal police auxiliaries (known locally as “assets”), suspected members or sympathizers of armed groups and political activists. Most of the victims are from poor and marginalized backgrounds. Despite the adoption of the Anti-Torture Act, justice and redress remain out of reach for most victims. The only conviction under the Act took place in April 2016, more than six years after it came into force.²⁸

Torture and other ill-treatment usually take place following irregular arrests by police, which deviate from standard operational procedures. The risk of torture and other ill-treatment is heightened when suspects are held incommunicado, or kept in unofficial or secret detention facilities. The police force operate with a lack of resources including the necessary forensic and investigative capacity and sometimes resort to torture and other ill-treatment to extract “confessions” or information from criminal suspects. In some cases, torture and other ill-treatment are inflicted to punish the suspects or extort money from them.²⁹

²⁴ Amnesty International, *Philippines: Five years on, justice for Maguindanao massacre can't wait*, 23 November 2014.

²⁵ United Nations Committee against Torture, *Concluding observations on the third periodic report of the Philippines*, CAT/C/PHL/CO/3, paragraph 7.

²⁶ Amnesty International, *Philippines Submission to the United Nations Committee against Torture*, 57th Session (Index: ASA 35/3684/2016).

²⁷ Amnesty International, *Above the Law: Police torture in the Philippines*, December 2014 (Index: ASA 35/007/2014), p. 26.

²⁸ Amnesty International, *Historic ruling on police torture following Amnesty International campaign*, 1 April 2016

²⁹ Amnesty International, *Above the Law: Police torture in the Philippines*, December 2014 (Index: ASA 35/007/2014).

Torture victims seeking redress face a complex web of accountability options, including different government agencies and internal disciplinary units within the Philippine National Police, some of which have overlapping jurisdictions. This makes for a confusing and complicated process, where victims are left to try to decipher the accountability body which could provide them with justice.³⁰

Amnesty International is also concerned about the slow progress in putting in place a National Preventative Mechanism in compliance with Philippines' obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Following pressure from human rights and civil society organizations, including Amnesty International, the National Preventive Mechanism Bill was filed in the Senate in December 2015. The Bill seeks to establish a National Committee for the Prevention of Torture, attached to the Commission on Human Rights. It was refiled before the Senate in June 2016. At the time of writing, it remains pending.

MATERNAL HEALTH AND SEXUAL AND REPRODUCTIVE RIGHTS

In 2014, after a year-long suspension of its implementation, the Supreme Court upheld the Responsible Parenthood and Reproductive Health Act against a legal challenge lodged by various faith-based groups. The law allows for the allocation of government funding for modern contraceptive methods and seeks to introduce reproductive health and sexuality education in schools.

However, the Court ruled eight provisions of the Act to be unconstitutional, including those prohibiting health practitioners from refusing to provide reproductive health services and penalizing them if they refuse; requiring all private health facilities, including those owned by religious groups, to provide family planning services including modern contraceptive supplies and procedures; allowing minors, including those who already have children or have had miscarriages, access to birth control without their parents' written consent; and allowing married individuals to undergo reproductive health procedures without the consent of their spouse. Repealing these provisions would be inconsistent with the Philippine's legal obligations, including Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),³¹ Article 12 of the International Covenant on Economic, Social and Cultural Rights,³² and related standards.³³

³⁰ Amnesty International, *Above the Law: Police torture in the Philippines*, December 2014 (Index: ASA 35/007/2014), p. 87

³¹ CEDAW General Recommendation 24 on article 12 makes clear that States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried* or because they are women.(paragraph 14) going on to recommend that States parties should also, in particular: ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health (paragraph 31).

³² CESCR General Comment 12 on article 12 states that the realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health (paragraph 21) and goes on to emphasize that States limiting access to contraceptives and other means of maintaining sexual and reproductive health are violating their duty to respect the right to health (paragraph 34).

³³ Amnesty International, *Philippines: Supreme Court ruling bolsters landmark law on reproductive rights*, 8 April 2014.

The Department of Justice has also failed to include exceptions to the total ban on abortion in the draft criminal code currently before Congress. Under international law and standards, including CEDAW and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states must allow legal and safe abortions at a minimum in cases of rape or incest, in cases where the life or health of the women and girls are at risk, and where the foetus is not viable.³⁴ Due to the total ban on abortion, clandestine abortions remain widespread in the Philippines, resulting in maternal mortality and morbidity and disability of women.³⁵

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF THE PHILIPPINES TO:

THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Ratify the International Convention on the Protection of All Persons from Enforced Disappearance and bring the Anti-Enforced Disappearance Act into line with the Convention by criminalizing enforced disappearance committed by groups acting without the support of the state and ensuring sufficient command responsibility;
- Ensure that the National Human Rights Commission, mandated to investigate allegations of human rights violations, is sufficiently resourced to effectively perform its functions.

UNLAWFUL KILLINGS AND ENFORCED DISAPPEARANCES

- Publicly acknowledge and condemn all unlawful killings and enforced disappearances, and in particular, immediately end unlawful killings and incitement to carry out killings in the name of the “war on drugs”;
- Ensure allegations of unlawful killings are investigated promptly, independently, impartially and effectively, that suspected perpetrators are tried in civilian courts in proceedings which meet international standards of fairness, and that families are provided with reparations;
- Provide effective protection to witnesses of unlawful killings from threats to their lives and security, by ensuring the proper implementation of the Witness Protection, Security and Benefit Act.
- Ensure the effective implementation of the Enforced Disappearances Act by taking concrete steps to guarantee prompt, impartial, independent investigations into all reports

³⁴ See Zampas and Gher, ‘Abortion as a Human Right – International and Regional Standards’ *Human Rights Law Review* (2008) 8(2) pp 249-292

³⁵ United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the Philippines*, 22 July 2015, CEDAW/C/PHL/CO/7-8, recommendation 40.

of enforced disappearance. Those found responsible should be brought to justice through prosecution in a court of law and victims should be guaranteed full reparations.

TORTURE AND OTHER ILL-TREATMENT

- Expedite the establishment of a National Preventive Mechanism, as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is independent of the government and has the necessary expertise and resources;
- Ensure immediate and effective implementation of the Administrative Order No. 35 Guidelines, and guarantee periodic monitoring of its implementation;
- Address the complexity and overlaps among accountability bodies for human rights violations by the police to streamline the process of holding perpetrators to account and facilitate access to justice for the victims of such violations;
- Ensure the effective implementation of the Anti-Torture Act by taking concrete steps to guarantee prompt, impartial and independent investigations into all reports of torture by law enforcement officials. Ensure all perpetrators are brought to justice through prosecution in a court of law.

MATERNAL HEALTH AND SEXUAL AND REPRODUCTIVE RIGHTS

- Ensure the full and effective implementation of the Responsible Parenthood and Reproductive Health Act in line with the Philippines' international obligations;
- Repeal all legislation criminalizing abortion, including healthcare providers performing such services, and take measures to allow legal and safe abortions at a minimum in cases of rape or incest, where the life or health of the women and girls is at risk, or where the foetus is not viable.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE³⁶

REPORTS AND BRIEFINGS:

Submission to the United Nations Committee Against Torture, 4 April 2016 (Index: ASA 35/3684/2016)

Above the Law: Police torture in the Philippines, December 2014 (Index: ASA 35/007/2014)

Submission to the UN Human Rights Committee: 106th Session (Index: ASA 35/006/2012)

OPEN LETTERS:

Building on the Anti-enforced Disappearance Act and Signing the International Convention for the Protection of all Persons from Enforced Disappearance, 22 December 2012 (Index: ASA 35/010/2012)

PUBLIC STATEMENTS AND PRESS RELEASES:

Duterte's 100 days of carnage, 7 October 2016

Over 1700 killings by unknown assassins and police indicate lawlessness, not crime control, 23 August 2016

New President should break cycle of human rights violations, not compound them, 10 May 2016

Ensure Accountability for Police Use of Excessive Force Against Demonstrators, 8 April 2016

Impunity Despite Philippines Landmark Torture Act, 4 December 2014

Five years on, justice for Maguindanao massacre can't wait, 23 November 2014

Five years later, no convictions under landmark anti-torture law, 10 November 2014

Supreme Court ruling bolsters landmark law on human rights, 8 April 2014

Philippines, a mockery of justice after Maguindanao? 23 November 2012

Cybercrime law threatens free speech and must be reviewed, 4 October 2012

³⁶ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/asia-and-the-pacific/philippines/>

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IS A GLOBAL MOVEMENT
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TO ONE PERSON, IT
MATTERS TO US ALL.**

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